

§ 33.7

needs of qualified individuals with handicaps.

[52 FR 11606, Apr. 9, 1987; 52 FR 23967, June 26, 1987]

§ 33.7 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

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§ 33.8 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 33.9 and 33.10 of this part, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

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§ 33.9 Program accessibility: Existing facilities.

(a) *General.* The Department shall operate such program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(b)(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the of-

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ficial shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (b)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or undue burdens.

(c) If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that qualified individuals with handicaps receive the benefits and services of the program or activity.

(d) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of